

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1419.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF PREPARED MUSTARD.

On November 20, 1911, the United States Attorney for the District of Minnesota, acting upon a report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 26 cases of mustard in the possession of Seabury & Co., St. Paul, Minn. The product was labeled on the unit packages: "Prepared Mustard—U. S. Serial No. 2906—not injurious to health—W. S. Co.—This mustard contains mustard seed, vinegar, salt, spices, flavored and colored with turmeric—Westmoreland Specialty Co., Grapeville, Pa. (Small paster on side of tumbler) 11½ oz."

Examinations of two samples of said product, numbered I. S. 10141-d and I. S. 10142-d, respectively, by the Bureau of Chemistry of the United States Department of Agriculture, showed the following results: I. S. 10141-d, labeled as 11½ oz.—the contents of five packages weighed, 10.77, 10.93, 10.92, 10.46, and 10.42 ounces, respectively, with an average of 10.7 ounces, an average shortage of 6.9 per cent. I. S. No. 10142-d, labeled as 12 oz.—the contents of five packages 10.07, 9.40, 9.97, 9.96, and 10.77 ounces, respectively, an average weight of 10.04 ounces, or an average shortage of 16.3 per cent. The libel alleged that the product, after shipment by the Westmoreland Specialty Co. from Grapeville, in the State of Pennsylvania, into the State of Minnesota, remaining in the original, unbroken packages and was misbranded in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure for confiscation. Misbranding was alleged in the libel in words and figures as follows: "That said 26 cases of mustard and each and every unit package or glass contained in said 26 cases are misbranded in violation of section 8, paragraph 3, in the case of foods, of the said Act of June 30, 1906, in this: that as appears from the said paster attached to each and all of the first above described dozen unit

packages contained in each of said 26 cases of mustard, each unit package or glass purports to contain eleven and one-half ounces, whereas in truth and in fact each unit package or glass contains a much less quantity, to wit, 9.15 per cent less than eleven and one half ounces; and as appears from the said paster attached to each and all of the last above described dozen unit packages contained in each of said 26 cases of mustard, each unit package or glass purports to contain twelve ounces, whereas in truth and in fact each unit package or glass contains a much less quantity, to wit, 15.4 per cent less than twelve ounces; and are misbranded in that the contents of said unit packages or glasses are not plainly and correctly stated on the outside of said unit package or glass."

On November 28, 1911, the case coming on to be heard and it appearing to the court that Seabury & Co. had filed their appearance, claim, and stipulation and written consent that a decree might be entered forfeiting the product to the use of the United States, the court found the product misbranded as alleged in the libel, and entered a decree condemning and forfeiting it to the United States, but with the proviso that it might be released to the claimants upon the payment by them of all costs and the giving of a bond in the sum of \$500 conditioned that the product should not be again sold contrary to law.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *February 16, 1912.*

